

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:05CV244-3-MU

ERIC E. COLLIER,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

THIS MATTER is before the Court upon Petitioner's Petition for a Writ of Habeas Corpus, filed June 24, 2005. For the reasons stated herein, the Petitioner's Motion to Vacate will be dismissed.

In reviewing the record, the Court notes that Petitioner filed a previous Petition for Writ of Habeas Corpus (case number 4:97cv20-1-MU) which was denied by this Court on March 28, 2000. "Before a second or successive application [for habeas corpus] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244 (b)(3)(A). Thus, this Court may not consider the merits of Petitioner's claims because he failed to first certify his motion with the Fourth Circuit Court of Appeals before filing it in the District Court.¹

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Petition for a Writ of

¹ The Court notes that Petitioner's Petition filed in this Court was stamped "received" by the Fourth Circuit Court of Appeals, however that does satisfy the requirement that Petitioner obtain an order authorizing the district court to consider the application.

Habeas Corpus is **DISMISSED** without prejudice.

Signed: July 8, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

